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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

H.F. and R.V.,

Petitioners,

v.

THE SUPERIOR COURT OF THE
COUNTY OF SAN LUIS OBISPO,

Respondent.

SAN LUIS OBISPO COUNTY
DEPARTMENT OF SOCIAL SERVICES,

Real Party in Interest.

2d Juv. No. 210505
(Super. Ct. No. 45442)
(San Luis Obispo County)

H.F. and R.V., the mother and biological father of C.V., seek extraordinary writ review (Welf. & Inst. Code, § 366.26; Cal. Rules of Court, rule 38.1)¹ of the juvenile court's order terminating family maintenance services and setting a section 366.26 permanency planning hearing. H.F. (Mother) contends the juvenile court improperly relied on a single unauthorized contact between C.V. and R.V.

¹ All statutory references are to the Welfare & Institutions Code, unless otherwise stated.

(Biological Father) to terminate services. She further contends that she received inadequate services because respondent, the San Luis Obispo County Department of Social Services (the Department), did not incorporate into its case plan recommendations made by Martha's Place, a private child assessment center that evaluated C.V. Biological Father contends he received inadequate services because he was omitted, without explanation, from case plans adopted after the six-month review hearing. We conclude the services offered to Mother were adequate, that Biological Father was not entitled to services because he did not achieve the status of a presumed father, and that Biological Father waived any objection to his paternity status or omission from case plans by failing to raise these issues in the juvenile court or timely appeal them. Accordingly, we deny both petitions.

Facts

Mother gave birth to C.V. in January 2003. She suffers from many physical and mental health problems that keep her in almost constant pain. Mother treats these conditions with legally obtained prescription medications and with medical marijuana. Despite these treatments, however, Mother is often in such pain that she cannot care for C.V. or maintain a clean, safe home for him. Mother is also embroiled in a long-term, physically and emotionally abusive relationship with Biological Father. The Department describes Biological Father as having untreated bi-polar disorder which he medicates with alcohol and illegal drugs. He is periodically unemployed, without financial support and homeless.

C.V. has often witnessed his parents quarreling and has seen Biological Father physically abuse Mother. He is of average intellect, is developmentally on track in most areas and has no serious behavioral problems. C.V. has had bouts of anxiety, some difficulty socializing with peers, and some difficulty with toilet training. These problems become more pronounced when he is exposed to his parents' chaotic, often violent lifestyle, and improved when he was placed with a stable foster family.

The Department received its first referral about C.V. at his birth, due to concerns about Mother's drug use. Over the next three years, the Department received nine more referrals, each relating to the same problems: cluttered, filthy and unsafe living conditions; general neglect of C.V. due to Mother's medical condition and prescription drug use; and domestic violence by Biological Father against Mother. From January 2003 through November 2006, the Department offered services, including counseling and parenting education, to Mother on an informal basis. It filed this petition in November 2006, when it determined that Mother would not make progress without the intervention of the juvenile court.

The same three problems have plagued this family continually during the pendency of this matter. For most of the time since he was declared a dependent of the court, C.V. has resided with Mother under a family maintenance plan. Her case plans directed Mother to participate in counseling, complete domestic violence prevention and parenting programs, maintain a clean and safe apartment, and allow her prescription medication use to be evaluated and monitored.

Biological Father's case plan directed him to participate in counseling, a drug and alcohol assessment, and domestic violence prevention and parenting programs. He was initially permitted unsupervised visitation with C.V. After C.V. witnessed domestic violence between his parents, Biological Father was restricted to supervised visits. Mother's case plan also directed her to keep Biological Father out of her apartment and to protect C.V. from unsupervised contact with him.

In February 2007, the Department filed a supplemental petition alleging Mother was out of compliance with her case plan because she allowed unsupervised visits between Biological Father and C.V. and the clutter in her apartment posed a substantial danger to C.V.'s health. The juvenile court detained C.V. in foster care. While in that placement, C.V.'s anxiety and other problems lessened dramatically. When he returned to Mother's residence in April 2007 he regressed to many of his problem behaviors.

In March 2008, C.V. told his CASA volunteer that he did not want to leave the apartment because he wanted "to stay here with Daddy." He also told the volunteer that Biological Father was staying at his house, but C.V. wasn't supposed to tell because it was a secret. When confronted by the Department, Mother denied that Biological Father had been staying in her apartment, claiming he'd had only one brief contact with C.V. The Department filed a second supplemental petition alleging that Mother had again fallen out of compliance with her case plan because she was allowing C.V. to have unsupervised contact with Biological Father and had allowed her apartment to become cluttered and unhealthy. It also reported concern that Mother was "pathologizing" C.V. by encouraging him to believe he shared her physical and emotional impairments. At the jurisdictional hearing on the supplemental petition, the juvenile court found the allegation of unauthorized visits to be true. It ordered C.V. detained. The Department returned C.V. to the same foster family. He remains in that placement and is once again flourishing.

After a two-day evidentiary hearing on the supplemental petition, the juvenile court found that Mother had only minimally complied with her case plans. Her apartment continued to be cluttered and filthy. She did not complete the domestic violence prevention program or progress in therapy. Mother continued to have difficulty attending to C.V.'s needs. She permitted Biological Father to stay in her apartment, and encouraged C.V. to lie to his CASA volunteer. The juvenile court concluded that, although Mother loved C.V., he could not safely be returned to her care. As a consequence, the juvenile court ordered services to Mother terminated and scheduled a permanency planning hearing. It entered the same order with respect to Biological Father.

Mother's Petition

Mother contends the juvenile court erred because its order terminating services was based on a single unsupervised contact between C.V. and Biological Father. She further contends she did not receive adequate services because the

Department did not incorporate into its case plan recommendations made by Martha's Place, a children's assessment center that evaluated C.V. There was no error.

First, Mother's services were not terminated based on a single unauthorized contact between C.V. and Biological Father. On at least one prior occasion, the juvenile court found that Mother violated her case plan by allowing Biological Father to stay in her apartment and by allowing C.V. to witness quarrels and domestic violence. Moreover, the trial court found that Mother had complied only minimally with case plan directives that she complete a domestic violence prevention program, address her medical and mental health issues, and separate herself from Biological Father. The Department's status reports, the social worker's testimony, and the juvenile court's prior factual findings and orders constitute substantial evidence supporting the order terminating services for Mother. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

Substantial evidence also supports the juvenile court's finding that the services Mother received were adequate. (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) The adequacy of a family maintenance plan is determined according to the circumstances of each case. (*Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164.) Services "need not be perfect. [Citation.] But they should be tailored to the specific needs of the particular family. [Citation.] Services will be found reasonable if the Department has 'identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of the service plan, and made reasonable efforts to assist the parents in areas where compliance proved difficult' " (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 972.)

The Department had no duty to implement the recommendations made by Martha's Place. Its obligation was to offer services designed to remedy the problems that led to C.V.'s placement in foster care. (*Id.*) It fulfilled that obligation by offering Mother referrals for counseling, domestic violence prevention and

parenting education. Moreover, its case plans do not conflict with the Martha's Place recommendations. Both emphasize that C.V. had to be protected from exposure to domestic violence because the violence contributed to his anxiety and other difficulties. "The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.) The juvenile court properly concluded that Mother was offered adequate services.

Biological Father's Petition

Biological Father contends he did not receive adequate services because he was omitted from the case plan, without explanation, after the six-month review hearing in July 2007. We conclude that Biological Father was not entitled to services because he did not achieve the status of a presumed father. We further conclude Biological Father waived this contention by failing to object to or appeal the juvenile court's prior findings concerning his paternity status and its findings that the "services being provided are adequate."

California dependency law distinguishes between presumed, biological, and alleged fathers. (*In re Mary G.* (2007) 151 Cal.App.4th 184, 197.) Only a presumed father is entitled to reunification services. (*In re Kobe A.* (2007) 146 Cal.App.4th 1113, 1120.) A biological father may achieve presumed father status if the juvenile court finds that he has "receive[d] the child into his home and openly [held] the child out as his natural child." (Fam. Code, § 7611, subd. (d); *In re Zacharia D.* (1993) 6 Cal.4th 435, 449-450.) " '[I]f a man fails to achieve presumed father status prior to the expiration of any reunification period in a dependency case, whether that period be 6, 12, or 18 months as in this case, he is not entitled to such services under section 361.5.' (Citation.)" (*Id.* at p. 453; see also *In re Vincent M.* (2008) 161 Cal.App.4th 943, 954-955.)

Following the jurisdiction and disposition hearing in January 2007, the juvenile court found petitioner's paternity status to be: "Biological." That finding was

repeated in nearly every subsequent report and order filed in this matter.² Biological Father and his counsel were served with each report and order. Counsel attended every hearing and Biological Father was personally present for at least two of them. Nevertheless, for more than 18 months between the paternity status finding and the order terminating services, Biological Father did not object to or appeal the juvenile court's finding, nor did he request that his paternity status be changed to that of a presumed father. As a result, Biological Father was not entitled to family maintenance services. (*In re Zacharia D.*, *supra*, 6 Cal.4th at p. 453.) The juvenile court did not err in terminating any services that had been gratuitously provided to him.

Moreover, by failing to object or request a change in his paternity status, Biological Father waived any contention that the paternity status finding was in error. "A parent's failure to raise an issue in the juvenile court prevents him or her from presenting the issue to the appellate court." (*In re Elijah V.* (2005) 127 Cal.App.4th 576, 582.) The trial court's January 23, 2007 order determining Biological Father's paternity status has long since become final and is no longer subject to appellate review. (§ 395; *Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1018; *In re Daniel K.* (1998) 61 Cal.App.4th 661, 667-668.) "An appeal from the most recent order in a dependency matter may not challenge earlier orders for which the time for filing an appeal has passed." (*Sara M. v. Superior Court*, *supra*, 36 Cal.4th at p. 1018.)

For the same reasons, we conclude Biological Father has waived any claim that he received inadequate services because he was omitted from case plans adopted after the six-month review hearing. Case plans adopted before that hearing included objectives and a visitation plan for Biological Father. After the six-month

² On a single occasion in the Findings and Orders After Dispositional Hearing, filed August 25, 2008, the juvenile court refers to Biological Father as the "presumed father." Every other finding in the same multi-page order, and in all previous orders, refer to petitioner as the biological father. The record does not reflect that Biological Father ever requested a change in his paternity status to that of presumed father.

review hearing in April 2007, reunification objectives were omitted for Biological Father, but the plan continued to provide for supervised visitation by him. Biological Father did not object to his omission, request additional services or appeal any of the orders in which the juvenile court adopted case plans and found that "services being provided are adequate." Consequently, Biological Father has waived review of this issue. (*In re Elijah V.*, *supra*, 127 Cal.App.4th at p. 582.)

Disposition

The petitions for extraordinary writ are denied.

NOT TO BE PUBLISHED.

YEGAN, Acting P.J.

We concur:

COFFEE, J.

PERREN, J.

Roger T. Picquet, Judge
Superior Court County of San Luis Obispo

Gerald C. Carrasco, for F. H., Petitioner.

Frederick F. Foss, for R.. V., Petitioner.

No appearance fo Respondent.

Warren R. Jensen, County Counsel, County of San Luis Obispo, Cherie
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